No. 04-670

In the Supreme Court of the United States

CONFIDENCE ALERU, PETITIONER

v.

ALBERTO R. GONZALES, ATTORNEY GENERAL

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

SUPPLEMENTAL BRIEF FOR THE RESPONDENT

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Pursuant to Rule 15.8 of the Rules of Court, the Acting Solicitor General respectfully files this supplemental brief to bring to the Court's attention new matter.

1. On March 4, 2005, this office learned that petitioner Confidence Aleru has failed to report for a mandatory appointment as part of her supervision by United States Immigration and Customs Enforcement (ICE), and we have also learned that petitioner's current whereabouts are unknown. As discussed below, we believe those circumstances disqualify petitioner from pursuing her petition in this Court.

As the attached documents reflect, petitioner was placed in the ICE Intensive Supervision Appearance Program (ISAP) on October 1, 2004. Pursuant to

the terms of ISAP, petitioner was required to appear, as directed, for purposes of continuing supervision, and to inform ICE of any change of residence. See App., *infra*, 3; 8 C.F.R. 265.1. Petitioner was scheduled to have a face-to-face meeting with her supervisor on December 13, 2004. Petitioner failed to appear for her visit and failed to call or reschedule her appointment. Subsequent attempts to locate petitioner revealed that she had removed her personal belongings from her residence. Petitioner has made no subsequent contact with ICE. We are further informed by counsel for petitioner that he is unaware of his client's whereabouts and unable to contact her.

2. Under the longstanding "fugitive disentitlement doctrine," this Court has recognized in the criminal context that a federal appellate court "ha[s] authority to dismiss an appeal or writ of certiorari if the party seeking relief is a fugitive while the matter is pending." *Degen* v. *United States*, 517 U.S. 820, 824 (1996). Several courts of appeals have held that the fugitive disentitlement doctrine applies to the immigration context as well, and that an alien has no right to insist upon judicial review of her asylum request when, in violation of regulations, she fails to cooperate with the supervision that is necessary to carry out any valid order against her. See, *e.g.*, *Sapoundjiev* v. *Ashcroft*, 376 F.3d 727, 728-729 (7th Cir.) (failure to appear for administrative detention justified dismissal of petition under fugitive disentitlement doctrine), reh'g denied, 384 F.3d 916 (7th Cir. 2004); *Antonio-Martinez* v. *INS*, 317 F.3d 1089, 1092-1093 (9th Cir. 2003) (alien's failure to keep attorney and INS informed of his current address, thus "insulating [himself] from the consequences of an unfavorable result," warranted dismissal

of petition for review); *Bar-Levy* v. *INS*, 990 F.2d 33, 35-36 (2d Cir. 1993); *Arana* v. *INS*, 673 F.2d 75, 77 & n.2 (3d Cir. 1982). As these cases illustrate, there is, at the very least, a serious question whether an alien who fails to comply with the terms of supervision that are designed to permit enforcement against her of an adverse removal order and judicial judgment may at the same time seek affirmative relief from the judiciary. That threshold issue furnishes an additional reason for the denial of certiorari in this case.

Respectfully submitted.

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Acting Solicitor General

MARCH 2005

APPENDIX